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Attorneys for Plaintiff
United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

EDEN VASSEUR,

Defendant.

CASE NO. 2:20-CR-00086-TLN

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
FINDINGS AND ORDER

DATE: September 24, 2020

TIME: 9:30 a.m.

COURT: Hon. Troy L. Nunley

This case is set for a status conference on September 24, 2020. By this stipulation, the defendant now moves to vacate the status conference, and to set this matter for a Change of Plea on October 15, 2020, and to exclude time between September 24, 2020, and October 15, 2020, under 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4].

On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California “until further notice.” Further, pursuant to General Order 611, this Court’s declaration of judicial emergency under 18 U.S.C. § 3174, and the Ninth Circuit Judicial Council’s Order of April 16, 2020 continuing this Court’s judicial emergency, this Court has allowed district judges to continue all criminal matters to a date after May 2, 2020.¹ This and previous General Orders,

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¹ A judge “may order case-by-case exceptions” at the discretion of that judge “or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020).

1 as well as the declarations of judicial emergency, were entered to address public health concerns related
2 to COVID-19.

3 Although the General Orders and declarations of emergency address the district-wide health
4 concern, the Supreme Court has emphasized that the Speedy Trial Act's end-of-justice provision
5 "counteract[s] substantive openendedness with procedural strictness," "demand[ing] on-the-record
6 findings" in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-
7 record findings, there can be no exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such
8 failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153
9 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit
10 findings on the record "either orally or in writing").

11 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
12 and inexcusable—General Orders 611, 612, 617, and 618 and the subsequent declaration of judicial
13 emergency require specific supplementation. Ends-of-justice continuances are excludable only if "the
14 judge granted such continuance on the basis of his findings that the ends of justice served by taking such
15 action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C.
16 § 3161(h)(7)(A). Moreover, no such period is excludable unless "the court sets forth, in the record of
17 the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of
18 such continuance outweigh the best interests of the public and the defendant in a speedy trial." *Id.*

19 The General Orders and declaration of judicial emergency exclude delay in the "ends of justice."
20 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address
21 continuances stemming from pandemics, natural disasters, or other emergencies, this Court has
22 discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-
23 week ends-of-justice continuance following Mt. St. Helens' eruption. *Furlow v. United States*, 644 F.2d
24 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed.
25 *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to
26 exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency).
27 The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated
28 by the statutory rules.

In light of the societal context created by the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4).² If continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant's counsel of record, hereby stipulate as follows:

1. By previous order, this matter was set for status on September 24, 2020.
2. By this stipulation, defendant now moves to continue the status conference until October 20, at 9:30 a.m., and to exclude time between September 24, 2020, and October 15, 2020, under C. § 3161(h)(7)(A), B(iv) [Local Code T4].
3. The parties agree and stipulate, and request that the Court find the following:
 - a) The government has represented that the discovery associated with this case includes multiple recordings and reports. All of the discovery has been either produced directly to counsel or made available for inspection.
 - b) Counsel for defendant desires additional time to analyze the discovery in the context of resolution negotiations and sentencing options, conduct sentencing legal research, and otherwise prepare for trial should the change of plea not proceed.
 - c) Counsel for defendant believes that failure to grant the above-requested continuance would deny him/her the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

² The parties note that General Order 612 acknowledges that a district judge may make “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D. Cal. March 18, 2020).

1 meetings and interviews.

2 f) Based on the above-stated findings, the ends of justice served by continuing the
3 case as requested outweigh the interest of the public and the defendant in a trial within the
4 original date prescribed by the Speedy Trial Act.

5 g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
6 et seq., within which trial must commence, the time period of September 24, 2020 to October 15,
7 2020, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code
8 T4] because it results from a continuance granted by the Court at defendant's request on the basis
9 of the Court's finding that the ends of justice served by taking such action outweigh the best
10 interest of the public and the defendant in a speedy trial.

11 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
12 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
13 must commence.

14 IT IS SO STIPULATED.

15 Dated: September 22, 2020

McGREGOR W. SCOTT
United States Attorney

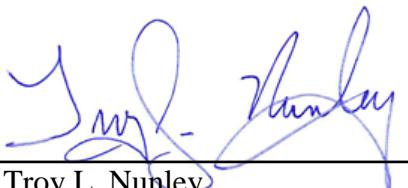
16 /s/ CAMERON L. DESMOND
17 CAMERON L. DESMOND
18 Assistant United States Attorney

19 Dated: September 22, 2020

20 /s/ DANIEL RUSSO
21 DANIEL RUSSO
Counsel for Defendant
Eden Vasseur

22 **FINDINGS AND ORDER**

23 IT IS SO FOUND AND ORDERED this 22nd day of September, 2020.

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25 _____
26 Troy L. Nunley
27 United States District Judge
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